

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PHYLLIS J. KING,

Plaintiff,

No. C 08-1919 PJH

v.

ORDER

UNITED STATES OF AMERICA,

Defendant.

Pro-se plaintiff Phyllis J. King originally filed the above-entitled action in the Superior Court of California, County of San Francisco, on December 31, 2007, against the Federal Bureau of Investigation ("FBI"). On April 11, 2008, the case was removed by the United States, pursuant to 28 U.S.C. § 1441(a), (b), and (f), and § 1442(a)(1).

On June 24, 2008, the court granted the United States' motion to dismiss for lack of subject matter jurisdiction. The court found that the complaint alleged tort claims against the United States, and that plaintiff had failed to exhaust administrative remedies before filing suit, as required by 28 U.S.C. § 2675(a).

The court advised plaintiff that she could re-file her claims with this court – i.e., file a new action – after she had filed an administrative claim with the FBI and such claim had been denied, or the FBI had failed to make a final disposition of the claim within six months. The court further advised plaintiff that under 28 U.S.C. § 1346(b) and 2679(a), any further action in this court must name the United States – not the FBI (and not the United States District Court) – as the defendant.

On December 1, 2008, plaintiff filed a document entitled "Summary of Declaration Administrative Claim Form," bearing the caption "Phyllis J. King vs. United States District Court" and the Case No. C-08-1919 PJH. Attached to this document is an administrative claim form (Standard Form 95), and attached to the Form 95 is a "Claim for Damage, Injury or Death" dated November 20, 2008, with numbered paragraphs that appear to correspond with the "Block" numbers on the Form 95. In Block 1 on the Form 95 ("Submit to Appropriate Federal Agency"), plaintiff has written "United States District Court, Northern District of California."

The Form 95 cannot be submitted to the United States District Court. The Federal Tort Claims Act requires that an administrative tort claim be presented to the appropriate federal agency within two years after the claim accrues. 28 U.S.C. § 2401(b). In this case, the proper agency, which must be designated in Block 1 of the Form 95, is the Federal Bureau of Investigation – the agency that plaintiff claims was responsible for her injuries. The United States District Court is not the proper federal agency, and cannot forward the claim to the FBI. The presentment of the claim to the proper agency is the responsibility of the claimant.

Because this action was previously dismissed for lack of subject matter jurisdiction, the court is unable to respond to any further filings in this case.

IT IS SO ORDERED.

Dated: December 2, 2008



PHYLLIS J. HAMILTON
United States District Judge